

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2016

By: Senator(s) Kirby

To: Public Health and
Welfare; Appropriations

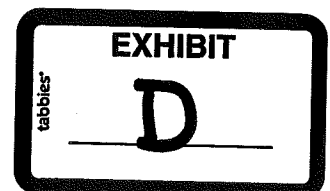
SENATE BILL NO. 2179
(As Sent to Governor)

1 AN ACT TO CREATE A NEW MISSISSIPPI DEPARTMENT OF CHILD
2 PROTECTION SERVICES; TO PROVIDE FOR A COMMISSIONER OF CHILD
3 PROTECTION SERVICES TO BE APPOINTED BY THE GOVERNOR; TO PROVIDE
4 THAT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES
5 AND THE COMMISSIONER OF CHILD PROTECTION SERVICES SHALL DEVELOP A
6 TRANSITION PLAN FOR IMPLEMENTATION OF THE NEW DEPARTMENT; TO
7 PROVIDE FOR THE TRANSFER OF THE FUNCTIONS OF THE OFFICE OF FAMILY
8 AND CHILDREN'S SERVICES IN THE DEPARTMENT OF HUMAN SERVICES TO THE
9 NEW MISSISSIPPI DEPARTMENT OF CHILD PROTECTION SERVICES EFFECTIVE
10 JULY 1, 2018; TO AMEND SECTION 43-15-111, MISSISSIPPI CODE OF
11 1972, IN CONFORMITY; TO AMEND SECTION 25-3-39, MISSISSIPPI CODE OF
12 1972, TO EXEMPT THE SALARY OF THE COMMISSIONER OF CHILD PROTECTION
13 SERVICES FROM STATUTORY SALARY LIMITATIONS; TO AMEND SECTION
14 25-9-120, MISSISSIPPI CODE OF 1972, TO EXEMPT PERSONAL SERVICE
15 CONTRACTS ENTERED INTO BY THE DEPARTMENT OF HUMAN SERVICES OR THE
16 DEPARTMENT OF CHILD PROTECTION SERVICES FROM THE REGULATIONS OF
17 THE PERSONAL SERVICE CONTRACT REVIEW BOARD; TO AMEND SECTION
18 25-9-127, MISSISSIPPI CODE OF 1972, TO EXEMPT PERSONNEL ACTIONS OF
19 THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF CHILD
20 PROTECTION SERVICES FROM STATE PERSONNEL BOARD REGULATIONS; TO
21 AMEND SECTIONS 25-53-1 AND 25-53-5, MISSISSIPPI CODE OF 1972, TO
22 EXEMPT ACTIONS OF THE DEPARTMENT OF HUMAN SERVICES AND THE
23 DEPARTMENT OF CHILD PROTECTION SERVICES FROM THE REGULATIONS OF
24 THE MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES; AND
25 FOR RELATED PURPOSES.

26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

27 SECTION 1. (1) There is hereby created a Mississippi

28 Department of Child Protection Services.



29 (2) The Chief Administrative Officer of the Department of
30 Child Protection Services shall be the Commissioner of Child
31 Protection Services who shall be appointed by the Governor with
32 the advice and consent of the Senate. The commissioner shall
33 possess the following qualifications:

34 (a) A bachelor's degree from an accredited institution
35 of higher learning and ten (10) years' experience in management,
36 public administration, finance or accounting; or

37 (b) A master's or doctoral degree from an accredited
38 institution of higher learning and five (5) years' experience in
39 management, public administration, finance, law or accounting.

40 (3) On a temporary basis, but for no longer than March 1,
41 2017, the Department of Child Protection Services may function as
42 a Division of the Department of Human Services.

43 (4) The Commissioner of Child Protection Services may assign
44 to the appropriate offices such powers and duties deemed
45 appropriate to carry out the lawful functions of the programs
46 transferred to the department under this act. The commissioner is
47 authorized to employ three (3) administrators who shall serve at
48 his will and pleasure to direct the bureaus and offices necessary
49 to carry out the lawful functions of the programs transferred to
50 the department.

51 (5) The Commissioner of Child Protection Services and the
52 Executive Director of the Department of Human Services shall
53 develop and implement a plan for the orderly establishment of the



Department of Child Protection Services and its transition from the Office of Family and Children's Services of the Department of Human Services. The plan shall:

(a) Describe a mechanism for the transfer of any equipment, supplies, records, furnishings or other materials, resources or funds dedicated to the operation of the Office of Family and Children's Services of the Department of Human Services, which may be useful to the Department of Child Protection Services;

(b) Determine the allocation of resources between the newly created Department of Child Protection Services and the Department of Human Services, as practicable;

(c) Determine the allocation of functions where the performance of services may be shared between the Department of Child Protection Services and other employees of the Department of Human Services, as practicable;

(d) Determine whether any administrative support services, such as Information Technology Services, bookkeeping and payroll can continue to be provided by the Department of Human Services; and

(e) Identify other areas deemed relevant by the commissioner and make recommendations thereon to achieve an orderly transition.

The Commissioner of Child Protection Services and the Executive Director of the Department of Human Services shall



79 recommend any necessary legislation to the Governor and the
80 Legislature before the 2017 Regular Session.

81 (6) The new Mississippi Department of Child Protection
82 Services is authorized to carry out the duties and
83 responsibilities of the Office of Family and Children's Services
84 of the Department of Human Services during the transition period
85 from and after passage of this act through July 1, 2018. The
86 Office of Family and Children's Services of the Department of
87 Human Services is directed to cooperate with the new department in
88 transferring resources and employees in furtherance of this act.
89 From and after July 1, 2018, the programs and services provided by
90 the Office of Family and Children's Services of the Department of
91 Human Services under the following statutes shall be provided by
92 the Department of Child Protection Services: Sections 41-87-5,
93 41-111-1, 43-1-2, 43-1-51, 43-1-55, 43-1-57, 43-1-63, 43-15-3,
94 43-15-5, 43-15-6, 43-15-13, 43-15-15, 43-15-17, 43-15-19,
95 43-15-21, 43-15-23, 43-15-51, 43-15-103, 43-15-105, 43-15-115,
96 43-15-125, 43-15-201, 43-15-203, 43-15-207 and 43-18-3,
97 Mississippi Code of 1972.

98 **SECTION 2.** Section 43-15-111, Mississippi Code of 1972, is
99 amended as follows:

100 43-15-111. The provisions of this * * * act do not apply to:

101 (* * * a) A facility or program owned or operated by an
102 agency of the State of Mississippi or United States government;



(* * *b) A facility or program operated by or under an exclusive contract with the Department of Corrections;

(* * *c) Schools and educational programs and facilities, the primary purpose of which is to provide a regular course of study necessary for advancement to a higher educational level or completion of a prescribed course of study, and which may, incident to such educational purposes, provide boarding facilities to the students of such programs.

(* * *d) Any residential child-caring agency and/or child-placing agency operated or conducted under the auspices of a religious institution and meeting the requirements or conditions of this section shall be exempt from the licensure requirements of this article under the following conditions: (* * *i) such religious institution must have a tax exempt status as a nonprofit religious institution in accordance with Section 501(c) of the Internal Revenue Code of 1954, as amended, or the real property owned and exclusively occupied by the religious institution must be exempt from location taxation, and (* * *ii) the agency or institution must be in compliance with the requirements of the Child Residential Home Notification Act, Section 43-16-1 et seq., Mississippi Code of 1972, and must not be in violation of Section 43-16-21(c) regarding the abuse and/or neglect of any child served by such home who has been adjudicated by the youth court as an abused and/or neglected child. Nothing in this * * * paragraph shall prohibit a residential child-caring agency or child-placing



128 agency operated by or conducted under the auspices of a religious
129 institution from obtaining a license pursuant to this article.

130 **SECTION 3.** Section 25-3-39, Mississippi Code of 1972, is
131 amended as follows:

132 25-3-39. (1) (a) Except as otherwise provided in this
133 section, no public officer, public employee, administrator, or
134 executive head of any arm or agency of the state, in the executive
135 branch of government, shall be paid a salary or compensation,
136 directly or indirectly, greater than one hundred fifty percent
137 (150%) of the salary fixed in Section 25-3-31 for the Governor,
138 nor shall the salary of any public officer, public employee,
139 administrator, or executive head of any arm or agency of the
140 state, in the executive branch of government, be supplemented with
141 any funds from any source, including federal or private funds.
142 Such salaries shall be completely paid by the state. All academic
143 officials, members of the teaching staffs and employees of the
144 state institutions of higher learning, the Mississippi Community
145 College Board, and community and junior colleges, and licensed
146 physicians who are public employees, shall be exempt from this
147 subsection. All professional employees who hold a bachelor's
148 degree or more advanced degree from an accredited four-year
149 college or university or a certificate or license issued by a
150 state licensing board, commission or agency and who are employed
151 by the Department of Mental Health shall be exempt from this
152 subsection if the State Personnel Board approves the exemption.



153 The Commissioner of Child Protection Services is exempt from this
154 subsection.

155 (b) The Governor shall fix the annual salary of the
156 Executive Director of the Mississippi Development Authority, the
157 annual salary of the Commissioner of Child Protection Services,
158 and the annual salary of the Chief of Staff of the Governor's
159 Office. The salary of the Governor's Chief of Staff shall not be
160 greater than one hundred fifty percent (150%) of the salary of the
161 Governor and shall be completely paid by the state without
162 supplementation from another source. The salary of the Executive
163 Director of the Mississippi Development Authority may be greater
164 than one hundred fifty percent (150%) of the salary of the
165 Governor and may be supplemented with funds from any source,
166 including federal or private funds; however, any state funds used
167 to pay the salary of the Executive Director of the Mississippi
168 Development Authority shall not exceed one hundred fifty percent
169 (150%) of the salary of the Governor. If the executive director's
170 salary is supplemented with private funds, the Mississippi
171 Development Authority shall publish on its website the amount of
172 the supplement and the name of the donor of the private funds.

173 (2) No public officer, employee or administrator shall be
174 paid a salary or compensation, directly or indirectly, in excess
175 of the salary authorized to be paid the executive head of the
176 state agency or department in which he is employed. The State
177 Personnel Board, based upon its findings of fact, may exempt



178 physicians and actuaries from this subsection when the acquisition
179 of such professional services is precluded based on the prevailing
180 wage in the relevant labor market.

181 (3) The executive head of any state agency or department
182 appointed by the Governor, in such executive head's discretion,
183 may waive all or any portion of the salary or compensation
184 lawfully established for the position.

185 **SECTION 4.** Section 25-9-120, Mississippi Code of 1972, is
186 amended as follows:

187 25-9-120. (1) Contract personnel, whether classified as
188 contract workers or independent contractors shall not be deemed
189 state service or nonstate service employees of the State of
190 Mississippi, and shall not be eligible to participate in the
191 Public Employees' Retirement System, or the State and School
192 Employees' Health Insurance Plan, nor be allowed credit for
193 personal and sick leave and other leave benefits as employees of
194 the State of Mississippi, notwithstanding Sections 25-3-91 through
195 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126;
196 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the
197 purpose set forth herein. Contract workers, i.e., contract
198 personnel who do not meet the criteria of independent contractors,
199 shall be subject to the provisions of Section 25-11-127.

200 (2) (a) There is hereby created the Personal Service
201 Contract Review Board, which shall be composed of the following
202 members:



203 (i) The State Personnel Director;

204 (ii) Two (2) individuals appointed by the Governor

205 with the advice and consent of the Senate;

206 (iii) Two (2) individuals appointed by the

207 Lieutenant Governor with the advice and consent of the Senate; and

208 (iv) The Executive Director of the Department of

209 Finance and Administration, serving as an ex officio member;

210 (b) The initial terms of each appointee shall be as

211 follows:

212 (i) One (1) member appointed by the Governor to

213 serve for a term ending June 30, 2017;

214 (ii) One (1) member appointed by the Governor to

215 serve for a term ending June 30, 2020;

216 (iii) One (1) member appointed by the Lieutenant

217 Governor to serve for a term ending June 30, 2018; and

218 (iv) One (1) member appointed by the Lieutenant

219 Governor to serve for a term ending June 30, 2019.

220 After the expiration of the initial terms, all appointed

221 members' terms shall be for a period of four (4) years from the

222 expiration date of the previous term, and until such time as the

223 member's successor is duly appointed and qualified;

224 (c) When appointing members to the Personal Service

225 Contract Review Board, the Governor and Lieutenant Governor shall

226 take into consideration persons who possess at least five (5)

227 years of management experience in general business, health care,



228 or finance for an organization, corporation, or other public or
229 private entity. Any person, or any employee or owner of a
230 company, who receives any grants, procurements or contracts that
231 are subject to approval under this section shall not be appointed
232 to the Personal Service Contract Review Board. Any person, or any
233 employee or owner of a company, who is a principal of the source
234 providing the personal or professional service shall not be
235 appointed to the Personal Service Contract Review Board if the
236 principal owns or controls a greater than five percent (5%)
237 interest or has an ownership value of One Million Dollars
238 (\$1,000,000.00) in the source's business, whichever is smaller;

239 (d) Members of the Personal Service Contract Review
240 Board shall be entitled to per diem as authorized by Section
241 25-3-69 and travel reimbursement as authorized by Section 25-3-41;

242 (e) The State Personnel Director shall be chairman and
243 shall preside over the meetings of the board. The board shall
244 annually elect a vice chairman, who shall serve in the absence of
245 the chairman. No business shall be transacted, including adoption
246 of rules of procedure, without the presence of a quorum of the
247 board. Three (3) members shall be a quorum. No action shall be
248 valid unless approved by the chairman and two (2) other of those
249 members present and voting, entered upon the minutes of the board
250 and signed by the chairman. Necessary clerical and administrative
251 support for the board shall be provided by the State Personnel
252 Board. Minutes shall be kept of the proceedings of each meeting,



253 copies of which shall be filed on a monthly basis with the
254 Chairmen of the Accountability, Efficiency and Transparency
255 Committees of the Senate and House of Representatives.

256 (3) The Personal Service Contract Review Board shall have
257 the following powers and responsibilities:

258 (a) Promulgate rules and regulations governing the
259 solicitation and selection of contractual services personnel
260 including personal and professional services contracts for any
261 form of consulting, policy analysis, public relations, marketing,
262 public affairs, legislative advocacy services or any other
263 contract that the board deems appropriate for oversight, with the
264 exception of any personal service contracts entered into for
265 computer or information technology-related services governed by
266 the Mississippi Department of Information Technology Services, any
267 personal service contracts entered into by the Mississippi
268 Department of Transportation, any personal service contracts
269 entered into by the Department of Human Services through June 30,
270 2019, which the Executive Director of the Department of Human
271 Services determines would be useful in establishing and operating
272 the Department of Child Protection Services, any personal service
273 contracts entered into by the Department of Child Protection
274 Services through June 30, 2019, and any contract for attorney,
275 accountant, auditor, architect, engineer, and utility rate expert
276 services. Any such rules and regulations shall provide for
277 maintaining continuous internal audit covering the activities of



278 such agency affecting its revenue and expenditures as required
279 under Section 7-7-3(6)(d) * * *. Any rules and regulation changes
280 related to personal and professional services contracts that may
281 be proposed by the Personal Service Contract Review Board shall be
282 submitted to the Chairmen of the Accountability, Efficiency and
283 Transparency Committees of the Senate and House of Representatives
284 at least fifteen (15) days prior to the board voting on the
285 proposed changes, and such rules and regulation changes, if
286 adopted, shall be promulgated in accordance with the Mississippi
287 Administrative Procedures Act;

288 (b) Approve all personal and professional services
289 contracts involving the expenditures of funds in excess of
290 Seventy-five Thousand Dollars (\$75,000.00);

291 (c) Develop mandatory standards with respect to
292 contractual services personnel which require invitations for
293 public bid, requests for proposals, record keeping and financial
294 responsibility of contractors. The Personal Service Contract
295 Review Board shall, unless exempted under this paragraph (c) or
296 under paragraph (d) or (j) of this subsection (3), require the
297 agency involved to advertise such contract for public bid, and may
298 reserve the right to reject any or all bids;

299 (i) Any agency that seeks to procure personal or
300 professional service contracts that are required to be approved by
301 the Personal Service Contract Review Board may petition for relief
302 from any requirement that the agency use competitive bidding as a



procurement method. The agency shall be required to show to the Personal Service Contract Review Board's satisfaction one (1) of the following:

1. Federal law or federal court order has established limitations on the use of competitive bidding for the personal or professional contracts the agency is seeking to procure; or

2. The agency is required to hire professionals whose members are prohibited from bidding by the rules of professional conduct promulgated by the regulating agency or agencies for that professional; or

3. The agency can establish that the use of competitive bidding will be counterproductive to the business of the agency.

(ii) If the Personal Service Contract Review Board determines that competitive bidding shall not be required for the particular personal or professional service the agency seeks to procure, then the Personal Service Contract Review Board shall direct the agency to establish a competitive procurement procedure for selecting the personal or professional service contract that ensures open, transparent procedures for making a selection. Such procedures shall include, but not be limited to, qualifications based selection or requests for qualifications. The Personal Service Contract Review Board shall also have the authority to



327 audit the records of any agency to ensure it has used competitive
328 procedures to contract for the personal or professional service;

329 (d) Prescribe certain circumstances whereby agency
330 heads may enter into contracts for personal and professional
331 services without receiving prior approval from the Personal
332 Service Contract Review Board. The Personal Service Contract
333 Review Board may establish a preapproved list of providers of
334 various personal and professional services for set prices with
335 which state agencies may contract without bidding or prior
336 approval from the board;

337 (e) To provide standards for the issuance of requests
338 for proposals, the evaluation of proposals received, consideration
339 of costs and quality of services proposed, contract negotiations,
340 the administrative monitoring of contract performance by the
341 agency and successful steps in terminating a contract;

342 (f) To present recommendations for governmental
343 privatization and to evaluate privatization proposals submitted by
344 any state agency;

345 (g) To authorize personal and professional service
346 contracts to be effective for more than one (1) year provided a
347 funding condition is included in any such multiple year contract,
348 except the State Board of Education, which shall have the
349 authority to enter into contractual agreements for student
350 assessment for a period up to ten (10) years. The State Board of



Education shall procure these services in accordance with the
Personal Service Contract Review Board procurement regulations;

(h) To request the State Auditor to conduct a
performance audit on any personal or professional service
contract;

(i) Prepare an annual report to the Legislature
concerning the issuance of personal service contracts during the
previous year, collecting any necessary information from state
agencies in making such report;

(j) Develop and implement the following standards and
procedures for the approval of any sole source contract for
personal and professional services regardless of the value of the
procurement:

(i) For the purposes of this paragraph (j), the
term "sole source" means only one (1) source is available that can
provide the required personal or professional service.

(ii) An agency that has been issued a binding,
valid court order mandating that a particular source or provider
must be used for the required service must include a copy of the
applicable court order in all future sole source contract reviews
for the particular personal or professional service referenced in
the court order.

(iii) Any agency alleging to have a sole source
for any personal or professional service shall have published on
the procurement portal website established by Sections 25-53-151



376 and 27-104-165, for at least fourteen (14) days, the terms of the
377 proposed contract for those services. In addition, the
378 publication shall include, but is not limited to, the following
379 information:

380 1. The personal or professional service
381 offered in the contract;

382 2. An explanation of why the personal or
383 professional service is the only one that can meet the needs of
384 the agency;

385 3. An explanation of why the source is the
386 only person or entity that can provide the required personal or
387 professional service;

388 4. An explanation of why the amount to be
389 expended for the personal or professional service is reasonable;
390 and

391 5. The efforts that the agency went through
392 to obtain the best possible price for the personal or professional
393 service.

394 (iv) If any person or entity objects and proposes
395 that the personal or professional service published under
396 subparagraph (iii) of this paragraph (j) is not a sole source
397 service and can be provided by another person or entity, then the
398 objecting person or entity shall notify the Personal Service
399 Contract Review Board and the agency that published the proposed



sole source contract with a detailed explanation of why the personal or professional service is not a sole source service.

(v) 1. If the agency determines after review that the personal or professional service in the proposed sole source contract can be provided by another person or entity, then the agency must withdraw the sole source contract publication from the procurement portal website and submit the procurement of the personal or professional service to an advertised competitive bid or selection process.

2. If the agency determines after review that there is only one (1) source for the required personal or professional service, then the agency may appeal to the Personal Service Contract Review Board. The agency has the burden of proving that the personal or professional service is only provided by one (1) source.

3. If the Personal Service Contract Review Board has any reasonable doubt as to whether the personal or professional service can only be provided by one (1) source, then the agency must submit the procurement of the personal or professional service to an advertised competitive bid or selection process. No action taken by the Personal Service Contract Review Board in this appeal process shall be valid unless approved by the chairman and two (2) other members of the Personal Service Contract Review Board present and voting.



424 (vi) The Personal Service Contract Review Board
425 shall prepare and submit a quarterly report to the House of
426 Representatives and Senate Committees on Accountability,
427 Efficiency and Transparency that details the sole source contracts
428 presented to the Personal Service Contract Review Board and the
429 reasons that the Personal Service Contract Review Board approved
430 or rejected each contract. Such quarterly reports shall also
431 include the documentation and memoranda required in subsection (5)
432 of this section. An agency that submitted a sole source contract
433 shall be prepared to explain the sole source contract to each
434 committee by December 15 of each year upon request by the
435 committee.

436 (4) Any contract submitted to the Personal Service Contract
437 Review Board for review and approval shall be presumed to be
438 approved if the Personal Service Contract Review Board does not
439 object to the contract within thirty (30) days of the agency's
440 submission of the contract. All submissions shall be made thirty
441 (30) days before the monthly meeting of the Personal Service
442 Contract Review Board or as prescribed by the Personal Service
443 Contract Review Board. If the Personal Service Contract Review
444 Board rejects any contract submitted for review or approval, the
445 Personal Service Contract Review Board shall clearly set out the
446 reasons for its action, including, but not limited to, the policy
447 that the agency has violated in its submitted contract and any
448 corrective actions that the agency may take to amend the contract



449 to comply with the rules and regulations of the Personal Service
450 Contract Review Board.

451 (5) All sole source contracts for personal and professional
452 services awarded by state agencies, whether approved by an agency
453 head or the Personal Service Contract Review Board, shall contain
454 in the procurement file a written determination for the approval,
455 using a request form furnished by the Personal Service Contract
456 Review Board. The written determination shall document the basis
457 for the determination, including any market analysis conducted in
458 order to ensure that the service required was practicably
459 available from only one (1) source. A memorandum shall accompany
460 the request form and address the following four (4) points:

461 (a) Explanation of why this service is the only service
462 that can meet the needs of the purchasing agency;

463 (b) Explanation of why this vendor is the only
464 practicably available source from which to obtain this service;

465 (c) Explanation of why the price is considered
466 reasonable; and

467 (d) Description of the efforts that were made to
468 conduct a noncompetitive negotiation to get the best possible
469 price for the taxpayers.

470 (6) The Personal Service Contract Review Board shall develop
471 and promulgate rules and regulations to define the allowable legal
472 relationship between contract employees and the contracting
473 departments, agencies and institutions of state government under



474 the jurisdiction of the State Personnel Board, in compliance with
475 the applicable rules and regulations of the federal Internal
476 Revenue Service (IRS) for federal employment tax purposes. Under
477 these regulations, the usual common law rules are applicable to
478 determine and require that such worker is an independent
479 contractor and not an employee, requiring evidence of lawful
480 behavioral control, lawful financial control and lawful
481 relationship of the parties. Any state department, agency or
482 institution shall only be authorized to contract for personnel
483 services in compliance with * * * those regulations.

484 (7) No member of the Personal Service Contract Review Board
485 shall use his official authority or influence to coerce, by threat
486 of discharge from employment, or otherwise, the purchase of
487 commodities or the contracting for personal or professional
488 services under this section.

489 (8) Nothing in this section shall impair or limit the
490 authority of the Board of Trustees of the Public Employees'
491 Retirement System to enter into any personal or professional
492 services contracts directly related to their constitutional
493 obligation to manage the trust funds, including, but not limited
494 to, actuarial, custodial banks, cash management, investment
495 consultant, and investment management contracts.

496 (9) Notwithstanding the exemption of personal service
497 contracts entered into by the Department of Human Services and
498 personal service contracts entered into by the Department of Child



Protection Services from the provisions of this section under subsection (3) (a), before the Department of Human Services or the Department of Child Protection Services may enter into a personal service contract, the department(s) shall give notice of the proposed personal service contract to the Personal Service Contract Review Board for any recommendations by the board. Upon receipt of the notice, the board shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the board does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may enter the proposed personal service contract. If the board responds to the department(s) within seven (7) calendar days, then the board has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may enter the proposed personal service contract. The board is not authorized to disapprove any proposed personal service contracts. This subsection shall stand repealed on July 1, 2019.

SECTION 5. Section 25-9-127, Mississippi Code of 1972, is amended as follows:

25-9-127. (1) No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system, may be



524 dismissed or otherwise adversely affected as to compensation or
525 employment status except for inefficiency or other good cause, and
526 after written notice and hearing within the department, agency or
527 institution as shall be specified in the rules and regulations of
528 the State Personnel Board complying with due process of law; and
529 any employee who has by written notice of dismissal or action
530 adversely affecting his compensation or employment status shall,
531 on hearing and on any appeal of any decision made in such action,
532 be required to furnish evidence that the reasons stated in the
533 notice of dismissal or action adversely affecting his compensation
534 or employment status are not true or are not sufficient grounds
535 for the action taken; provided, however, that this provision shall
536 not apply (a) to persons separated from any department, agency or
537 institution due to curtailment of funds or reduction in staff when
538 such separation is in accordance with rules and regulations of the
539 state personnel system; (b) during the probationary period of
540 state service of twelve (12) months; and (c) to an executive
541 officer of any state agency who serves at the will and pleasure of
542 the Governor, board, commission or other appointing authority.

543 (2) The operation of a state-owned motor vehicle without a
544 valid Mississippi driver's license by an employee of any
545 department, agency or institution that is included under this
546 chapter and that is subject to the rules and regulations of the
547 state personnel system shall constitute good cause for dismissal
548 of such person from employment.



549 (3) Beginning July 1, 1999, every male between the ages of
550 eighteen (18) and twenty-six (26) who is required to register
551 under the federal Military Selective Service Act, 50 USCS App.
552 453, and who is an employee of the state shall not be promoted to
553 any higher position of employment with the state until he submits
554 to the person, commission, board or agency by which he is employed
555 satisfactory documentation of his compliance with the draft
556 registration requirements of the Military Selective Service Act.
557 The documentation shall include a signed affirmation under penalty
558 of perjury that the male employee has complied with the
559 requirements of the Military Selective Service Act.

560 (4) For a period of two (2) years beginning July 1, 2014,
561 the provisions of subsection (1) shall not apply to the personnel
562 actions of the State Department of Education that are subject to
563 the rules and regulations of the State Personnel Board, and all
564 employees of the department shall be classified as nonstate
565 service during that period. However, any employee hired after
566 July 1, 2014, by the department shall meet the criteria of the
567 State Personnel Board as it presently exists for employment. The
568 State Superintendent of Public Education and the State Board of
569 Education shall consult with the Office of the Attorney General
570 before taking personnel actions authorized by this section to
571 review those actions for compliance with applicable state and
572 federal law.



573 It is not the intention or effect of this section to include
574 any school attendance officer in any exemption from coverage under
575 the State Personnel Board policy or regulations, including, but
576 not limited to, termination and conditions of employment.

577 (5) For a period of one (1) year beginning July 1, 2015, the
578 provisions of subsection (1) shall not apply to the personnel
579 actions of the Department of Corrections, and all employees of the
580 department shall be classified as nonstate service during that
581 period. However, any employee hired after July 1, 2015, by the
582 department shall meet the criteria of the State Personnel Board as
583 it presently exists for employment. The Commissioner of
584 Corrections shall consult with the Office of the Attorney General
585 before taking personnel actions authorized by this section to
586 review those actions for compliance with applicable state and
587 federal law.

588 (6) Through July 1, 2019, the provisions of subsection (1)
589 of this section shall not apply to the personnel actions of the
590 Department of Human Services that are subject to the rules and
591 regulations of the State Personnel Board, and all employees of the
592 department shall be classified as nonstate service during that
593 period. Any employee hired on or after July 1, 2019, by the
594 department shall meet the criteria of the State Personnel Board as
595 it presently exists for employment. The Executive Director of
596 Human Services shall consult with the Office of the Attorney
597 General before taking personnel actions authorized by this section



598 to review those actions for compliance with applicable state and
599 federal law.

600 (7) Through July 1, 2019, the provisions of subsection (1)
601 of this section shall not apply to the personnel actions of the
602 Department of Child Protection Services that are subject to the
603 rules and regulations of the State Personnel Board, and all
604 employees of the department shall be classified as nonstate
605 service during that period. Any employee hired on or after July
606 1, 2019, by the division shall meet the criteria of the State
607 Personnel Board as it presently exists for employment. The
608 Commissioner of Child Protection Services shall consult with the
609 Office of the Attorney General before taking personnel actions
610 authorized by this section to review those actions for compliance
611 with applicable state and federal law.

612 **SECTION 6.** Section 25-53-1, Mississippi Code of 1972, is
613 amended as follows:

614 25-53-1. The Legislature * * * recognizes that in order for
615 the State of Mississippi to receive the maximum use and benefit
616 from information technology and services now in operation or which
617 will in the future be placed in operation, there should be full
618 cooperation and cohesive planning and effort by and between the
619 several state agencies and that it is the responsibility of
620 the * * * the Legislature to provide statutory authority therefor.
621 The Legislature, therefore, declares and determines that for these
622 and other related purposes there is hereby established an agency



623 of state government to be known as the Mississippi Department of
624 Information Technology Services (MDITS). The Legislature further
625 declares that the Mississippi Department of Information Technology
626 Services (MDITS) shall provide statewide services that facilitate
627 cost-effective information processing and telecommunication
628 solutions. State agencies shall work in full cooperation with the
629 board of MDITS to identify opportunities to minimize duplication,
630 reduce costs and improve the efficiency of providing common
631 technology services across agency boundaries. The provisions of
632 this chapter shall not apply to the Department of Human Services
633 for a period of three (3) years beginning July 1, 2016. The
634 provisions of this chapter shall not apply to the Department of
635 Child Protection Services for a period of three (3) years
636 beginning July 1, 2016.

637 Notwithstanding the exemption of the Department of Human
638 Services and the Department of Child Protection Services from the
639 provisions of this section, before the Department of Human
640 Services or the Department of Child Protection Services may take
641 an action that would otherwise be subject to the provisions of
642 this section, the department(s) shall give notice of the proposed
643 action to the MDITS for any recommendations by the MDITS. Upon
644 receipt of the notice, the MDITS shall post the notice on its
645 website and on the procurement portal website established by
646 Sections 25-53-151 and 27-104-165. If the MDITS does not respond
647 to the department(s) within seven (7) calendar days after



648 receiving the notice, the department(s) may take the proposed
649 action. If the MDITS responds to the department(s) within seven
650 (7) calendar days, then the MDITS has seven (7) calendar days from
651 the date of its initial response to provide any additional
652 recommendations. After the end of the second seven-day period,
653 the department(s) may take the proposed action. The MDITS is not
654 authorized to disapprove any proposed actions that would otherwise
655 be subject to the provisions of this section. This paragraph
656 shall stand repealed on July 1, 2019.

657 **SECTION 7.** Section 25-53-5, Mississippi Code of 1972, is
658 amended as follows:

659 25-53-5. The authority shall have the following powers,
660 duties, and responsibilities:

661 (a) (i) The authority shall provide for the
662 development of plans for the efficient acquisition and utilization
663 of computer equipment and services by all agencies of state
664 government, and provide for their implementation. In so doing,
665 the authority may use the MDITS' staff, at the discretion of the
666 executive director of the authority, or the authority may contract
667 for the services of qualified consulting firms in the field of
668 information technology and utilize the service of such consultants
669 as may be necessary for such purposes. Pursuant to Section
670 25-53-1, the provisions of this section shall not apply to the
671 Department of Human Services for a period of three (3) years
672 beginning on July 1, 2016. Pursuant to Section 25-53-1, the



673 provisions of this section shall not apply to the Department of
674 Child Protection Services for a period of three (3) years
675 beginning July 1, 2016.

676 (ii) Notwithstanding the exemption of the
677 Department of Human Services and the Department of Child
678 Protection Services from the provisions of this section, before
679 the Department of Human Services or the Department of Child
680 Protection Services may take an action that would otherwise be
681 subject to the provisions of this section, the department(s) shall
682 give notice of the proposed action to the MDITS for any
683 recommendations by the MDITS. Upon receipt of the notice, the
684 MDITS shall post the notice on its website and on the procurement
685 portal website established by Sections 25-53-151 and 27-104-165.
686 If the MDITS does not respond to the department(s) within seven
687 (7) calendar days after receiving the notice, the department(s)
688 may take the proposed action. If the MDITS responds to the
689 department(s) within seven (7) calendar days, then the MDITS has
690 seven (7) calendar days from the date of its initial response to
691 provide any additional recommendations. After the end of the
692 second seven-day period, the department(s) may take the proposed
693 action. The MDITS is not authorized to disapprove any proposed
694 actions that would otherwise be subject to the provisions of this
695 section. This subparagraph (ii) shall stand repealed on July 1,
696 2019.



697 (b) The authority shall immediately institute
698 procedures for carrying out the purposes of this chapter and
699 supervise the efficient execution of the powers and duties of the
700 office of executive director of the authority. In the execution
701 of its functions under this chapter, the authority shall maintain
702 as a paramount consideration the successful internal organization
703 and operation of the several agencies so that efficiency existing
704 therein shall not be adversely affected or impaired. In executing
705 its functions in relation to the institutions of higher learning
706 and junior colleges in the state, the authority shall take into
707 consideration the special needs of such institutions in relation
708 to the fields of teaching and scientific research.

709 (c) Title of whatever nature of all computer equipment
710 now vested in any agency of the State of Mississippi is hereby
711 vested in the authority, and no such equipment shall be disposed
712 of in any manner except in accordance with the direction of the
713 authority or under the provisions of such rules and regulations as
714 may hereafter be adopted by the authority in relation thereto.

715 (d) The authority shall adopt rules, regulations, and
716 procedures governing the acquisition of computer and
717 telecommunications equipment and services which shall, to the
718 fullest extent practicable, insure the maximum of competition
719 between all manufacturers of supplies or equipment or services.
720 In the writing of specifications, in the making of contracts
721 relating to the acquisition of such equipment and services, and in



722 the performance of its other duties the authority shall provide
723 for the maximum compatibility of all information systems hereafter
724 installed or utilized by all state agencies and may require the
725 use of common computer languages where necessary to accomplish the
726 purposes of this chapter. The authority may establish by
727 regulation and charge reasonable fees on a nondiscriminatory basis
728 for the furnishing to bidders of copies of bid specifications and
729 other documents issued by the authority.

730 (e) The authority shall adopt rules and regulations
731 governing the sharing with, or the sale or lease of information
732 technology services to any nonstate agency or person. Such
733 regulations shall provide that any such sharing, sale or lease
734 shall be restricted in that same shall be accomplished only where
735 such services are not readily available otherwise within the
736 state, and then only at a charge to the user not less than the
737 prevailing rate of charge for similar services by private
738 enterprise within this state.

739 (f) The authority may, in its discretion, establish a
740 special technical advisory committee or committees to study and
741 make recommendations on technology matters within the competence
742 of the authority as the authority may see fit. Persons serving on
743 the Information Resource Council, its task forces, or any such
744 technical advisory committees shall be entitled to receive their
745 actual and necessary expenses actually incurred in the performance
746 of such duties, together with mileage as provided by law for state



747 employees, provided the same has been authorized by a resolution
748 duly adopted by the authority and entered on its minutes prior to
749 the performance of such duties.

750 (g) The authority may provide for the development and
751 require the adoption of standardized computer programs and may
752 provide for the dissemination of information to and the
753 establishment of training programs for the personnel of the
754 various information technology centers of state agencies and
755 personnel of the agencies utilizing the services thereof.

756 (h) The authority shall adopt reasonable rules and
757 regulations requiring the reporting to the authority through the
758 office of executive director of such information as may be
759 required for carrying out the purposes of this chapter and may
760 also establish such reasonable procedures to be followed in the
761 presentation of bills for payment under the terms of all contracts
762 for the acquisition of computer equipment and services now or
763 hereafter in force as may be required by the authority or by the
764 executive director in the execution of their powers and duties.

765 (i) The authority shall require such adequate
766 documentation of information technology procedures utilized by the
767 various state agencies and may require the establishment of such
768 organizational structures within state agencies relating to
769 information technology operations as may be necessary to
770 effectuate the purposes of this chapter.



771 (j) The authority may adopt such further reasonable
772 rules and regulations as may be necessary to fully implement the
773 purposes of this chapter. All rules and regulations adopted by
774 the authority shall be published and disseminated in readily
775 accessible form to all affected state agencies, and to all current
776 suppliers of computer equipment and services to the state, and to
777 all prospective suppliers requesting the same. Such rules and
778 regulations shall be kept current, be periodically revised, and
779 copies thereof shall be available at all times for inspection by
780 the public at reasonable hours in the offices of the authority.
781 Whenever possible no rule, regulation or any proposed amendment to
782 such rules and regulations shall be finally adopted or enforced
783 until copies of * * * the proposed rules and regulations have been
784 furnished to all interested parties for their comment and
785 suggestions.

786 (k) The authority shall establish rules and regulations
787 which shall provide for the submission of all contracts proposed
788 to be executed by the executive director for computer equipment or
789 services to the authority for approval before final execution, and
790 the authority may provide that such contracts involving the
791 expenditure of less than such specified amount as may be
792 established by the authority may be finally executed by the
793 executive director without first obtaining such approval by the
794 authority.



795 (1) The authority is authorized to purchase, lease, or
796 rent computer equipment or services and to operate * * * that
797 equipment and * * * use those services in providing services to
798 one or more state agencies when in its opinion such operation will
799 provide maximum efficiency and economy in the functions of any
800 such agency or agencies.

801 (m) Upon the request of the governing body of a
802 political subdivision or instrumentality, the authority shall
803 assist the political subdivision or instrumentality in its
804 development of plans for the efficient acquisition and utilization
805 of computer equipment and services. An appropriate fee shall be
806 charged the political subdivision by the authority for such
807 assistance.

808 (n) The authority shall adopt rules and regulations
809 governing the protest procedures to be followed by any actual or
810 prospective bidder, offerer or contractor who is aggrieved in
811 connection with the solicitation or award of a contract for the
812 acquisition of computer equipment or services. Such rules and
813 regulations shall prescribe the manner, time and procedure for
814 making protests and may provide that a protest not timely filed
815 shall be summarily denied. The authority may require the
816 protesting party, at the time of filing the protest, to post a
817 bond, payable to the state, in an amount that the authority
818 determines sufficient to cover any expense or loss incurred by the
819 state, the authority or any state agency as a result of the



820 protest if the protest subsequently is determined by a court of
821 competent jurisdiction to have been filed without any substantial
822 basis or reasonable expectation to believe that the protest was
823 meritorious; however, in no event may the amount of the bond
824 required exceed a reasonable estimate of the total project cost.
825 The authority, in its discretion, also may prohibit any
826 prospective bidder, offerer or contractor who is a party to any
827 litigation involving any such contract with the state, the
828 authority or any agency of the state to participate in any other
829 such bid, offer or contract, or to be awarded any such contract,
830 during the pendency of the litigation.

831 (o) The authority shall make a report in writing to the
832 Legislature each year in the month of January. Such report shall
833 contain a full and detailed account of the work of the authority
834 for the preceding year as specified in Section 25-53-29(3).

835 All acquisitions of computer equipment and services involving
836 the expenditure of funds in excess of the dollar amount
837 established in Section 31-7-13(c), or rentals or leases in excess
838 of the dollar amount established in Section 31-7-13(c) for the
839 term of the contract, shall be based upon competitive and open
840 specifications, and contracts therefor shall be entered into only
841 after advertisements for bids are published in one or more daily
842 newspapers having a general circulation in the state not less than
843 fourteen (14) days prior to receiving sealed bids therefor. The
844 authority may reserve the right to reject any or all bids, and if



all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(p) When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of telecommunications equipment, software and services.

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

(r) All fees collected by the Mississippi Department of Information Technology Services shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature.



869 (s) The authority shall work closely with the council
870 to bring about effective coordination of policies, standards and
871 procedures relating to procurement of remote sensing and
872 geographic information systems (GIS) resources. In addition, the
873 authority is responsible for development, operation and
874 maintenance of a delivery system infrastructure for geographic
875 information systems data. The authority shall provide a warehouse
876 for Mississippi's geographic information systems data.

877 (t) The authority shall manage one or more State Data
878 Centers * * * to provide information technology services on a
879 cost-sharing basis. In determining the appropriate services to be
880 provided through the State Data Center, the authority should
881 consider those services that:

882 (i) Result in savings to the state as a whole;
883 (ii) Improve and enhance the security and
884 reliability of the state's information and business systems; and
885 (iii) Optimize the efficient use of the state's
886 information technology assets, including, but not limited to,
887 promoting partnerships with the state institutions of higher
888 learning and community colleges to capitalize on advanced
889 information technology resources.

890 (u) The authority shall increase federal participation
891 in the cost of the State Data Center to the extent provided by law
892 and its shared technology infrastructure through providing such
893 shared services to agencies that receive federal funds. With



894 regard to state institutions of higher learning and community
895 colleges, the authority may provide shared services when mutually
896 agreeable, following a determination by both the authority and the
897 Board of Trustees of State Institutions of Higher Learning or the
898 Mississippi Community College Board, as the case may be, that the
899 sharing of services is mutually beneficial.

900 (v) The authority, in its discretion, may require new
901 or replacement agency business applications to be hosted at the
902 State Data Center. With regard to state institutions of higher
903 learning and community colleges, the authority and the Board of
904 Trustees of State Institutions of Higher Learning or the
905 Mississippi Community College Board, as the case may be, may agree
906 that institutions of higher learning or community colleges may
907 utilize business applications that are hosted at the State Data
908 Center, following a determination by both the authority and the
909 applicable board that the hosting of those applications is
910 mutually beneficial. In addition, the authority may establish
911 partnerships to capitalize on the advanced technology resources of
912 the Board of Trustees of State Institutions of Higher Learning or
913 the Mississippi Community College Board, following a determination
914 by both the authority and the applicable board that such a
915 partnership is mutually beneficial.

916 (w) The authority shall provide a periodic update
917 regarding reform-based information technology initiatives to the



918 Chairmen of the House and Senate Accountability, Efficiency and
919 Transparency Committees.

920 **SECTION 8.** Section 1 of this act shall take effect and be in
921 force from and after its passage, and Sections 2 through 7 of this
922 act shall take effect and be in force from and after July 1, 2016.

